

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

11 UNITED STATES OF AMERICA, ) 3:04-cr-00082-HDM  
12 Respondent/Plaintiff, )  
13 ) ORDER  
14 vs. )  
15 HORATIO DEMARIOUS SMITH, )  
16 Petitioner/Defendant. )

17 Before the court is defendant's motion to voluntarily withdraw  
18 his motion to vacate, set aside, or correct his sentence pursuant 28  
19 U.S.C. § 2255 filed on March 27, 2017 (ECF No. 158). The United  
20 States has not responded.

21       Defendant requests to withdraw his § 2255 motion filed *nunc pro  
22 tunc* on June 24, 2016 (ECF No. 149) pursuant to Federal Rule of Civil  
23 Procedure 41(a)(1)(A)(i). The United States did not file an  
24 opposition to the § 2255 motion. Accordingly, the court will allow  
25 defendant to withdraw his § 2255 motion. In granting the motion to  
26 withdraw, the court makes no determination as to whether a new § 2255  
27 motion that defendant may file in the future would constitute a second  
28 or successive motion and therefore require certification from the

1 Ninth Circuit Court of Appeals before being filed in U.S. District  
2 Court. See 28 U.S.C. § 2255(h).

3 IT IS THEREFORE ORDERED that defendant's motion to voluntarily  
4 withdraw his motion to vacate, set aside, or correct his sentence  
5 pursuant 28 U.S.C. § 2255 (ECF No. 158) is **GRANTED**.

6 IT IS FURTHER ORDERED that defendant's motion to vacate, set  
7 aside, or correct his sentence pursuant 28 U.S.C. § 2255 (ECF No. 149)  
8 is **WITHDRAWN**.

9 DATED: This 25th day of July, 2017.

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12 UNITED STATES DISTRICT JUDGE  
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